

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Section 68.4 of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible	)	
Telephones	)	
	)	
Petition for Temporary and Limited	)	
Waiver of Section 20.19(d)(2)	)	
of the Commission's Rules	)	

**Petition for Temporary and Limited Waiver  
of Section 20.19(d)(2) of the Commission's Rules**

Brown County MSA, LP, Wisconsin RSA #4, LP, Wisconsin RSA #10, LP, Wausau Cellular Telephone Company, LP, and Nsighttel Wireless, LLC d/b/a Cellcom ("Cellcom"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),<sup>1</sup> hereby requests a limited and temporary waiver of Section 20.19(d)(2) of the Commission's rules.<sup>2</sup> Cellcom is fully committed to ensuring access to digital wireless services by individuals with hearing loss. However, because CDMA hearing aid compatible ("HAC") handsets that meet the FCC's inductive coupling requirements ("T-rated") are not widely commercially available in sufficient quantity to allow Cellcom to obtain them prior to September 18, 2006, Cellcom is compelled to seek a waiver of the FCC's requirement that Cellcom offer at least two T-rated handsets, and Cellcom respectfully requests an extension of the September 18, 2006 deadline until December 1, 2006. Grant of the instant waiver request is consistent with the public interest as outlined below.

---

<sup>1</sup> 47 C.F.R. §§ 1.3 and 1.925.

<sup>2</sup> 47 C.F.R. §§ 20.19(d)(2).

**I. Cellcom Is Unable to Meet the FCC's September 18, 2006 T-rated Handset Deadline Due to Factors Outside of Its Control**

Cellcom is a small, rural commercial mobile radio service ("CMRS") provider and must depend upon secondary market handset wholesalers for access to new handsets. Cellcom uses Brightpoint Inc. ("Brightpoint") and similar handset vendors who sell a wide array of handsets from different manufacturers. Cellcom simply does not have the market power to make deals directly with manufacturers such as Motorola and Nokia. As the Commission is aware, handset manufacturers have only recently been seeking FCC certification for T-rated handsets. These certified handsets are unavailable to most small carriers like Cellcom since the manufacturers favor nationwide carriers when new products are released. To date, Cellcom has only been able to acquire and sell the Motorola V3c which is T-rated. Brightpoint and Cellcom's other suppliers are unable to commit to delivering another T-rated handset in any meaningful quantity to sell before the end of November.<sup>3</sup> Accordingly, and as discussed below, Cellcom has no choice but to request a waiver of the Commission's Section 20.19(d)(2) HAC benchmark.

As detailed in Cellcom's HAC Reports on file in this docket, Cellcom has worked diligently since the Commission announced the modification to the exemption for wireless phones in 2003 to ensure that it would meet the Commission's HAC benchmarks. Cellcom has not only worked with handset distributors such as Brightpoint, but has also made repeated contact with handset manufacturers to try and determine when CDMA wireless handsets would be available that meet all of the Commission's benchmarks. However, despite these efforts, Cellcom is merely a purchaser and not a manufacturer of wireless handsets and therefore has little to no ability to affect the availability of HAC handsets from manufacturers.

---

<sup>3</sup> This commitment is dependent upon the manufacturer receiving FCC certification.

Even Cingular Wireless, the nation's largest wireless carrier, has previously acknowledged that it "has only the ability to indirectly affect the availability of HAC phones from vendors."<sup>4</sup> Likewise, T-Mobile, another nationwide carrier, has stated that it takes an additional sixty days to obtain, test and deploy HAC compliant handsets.<sup>5</sup> As a small carrier with considerably less market clout than nationwide carriers like Cingular Wireless and T-Mobile, Cellcom is given low priority by wireless handset vendors in fulfilling wireless handset orders.<sup>6</sup> Accordingly, Cellcom is requesting a temporary waiver until December 1, 2006 of Section 20.19(d)(2) of the Commission's rules.

## **II. Cellcom Satisfies the Relevant Standards for Waiver of the Commission's Rules**

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.<sup>7</sup> The Commission has previously recognized that waiver grant is in the public interest where, as here, compliance with a particular regulation is dependent on the availability of equipment from manufacturers.<sup>8</sup> In the FCC's *Fourth Memorandum Opinion and Order* ("E911 Fourth MO&O"), the Commission recognized that there would be instances when "technology-related issues" or "exceptional circumstances" would cause a delay in a wireless carrier's ability to meet a FCC benchmark. Such recognition is consistent with the Commission's acknowledgement that "bringing a new product to market requires manufacturers to undertake a

---

<sup>4</sup> Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, WT Docket 01-309 (filed August 5, 2005) ("*Cingular Petition*").

<sup>5</sup> T-Mobile USA, Inc. Petition for Waiver, WT Docket No. 01-309, (filed August 26, 2005) ("*T-Mobile Petition*"). See also Reply of T-Mobile USA, Inc., WT-Docket No. 01-309 (filed September 8, 2005).

<sup>6</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶¶ 17-21 (2002).

<sup>7</sup> 47 C.F.R. § 1.3.

<sup>8</sup> See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000) ("*E911 Fourth MO&O*"); *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase II*, 13 FCC Rcd 9564 (1998); *Policies and Rules Concerning Operator Service Providers*, 5 FCC Rcd 4630 (1990).

time-consuming series of complex steps.”<sup>9</sup> Manufacturers have only just overcome the technological complexities of meeting the inductive coupling standards in order to make HAC handsets available for carriers to meet the FCC’s deadlines. Many manufacturers are unlikely to have a handset certified in time to meet the Commission’s September 18, 2006 deadline. Of the manufactures who have had T-rated handsets certified, most of these handsets, as discussed above, are still unavailable to small carriers like Cellcom. Therefore, the requested waiver is consistent with the Commission’s recognition that compliance deadlines should be linked to the availability of manufacturer equipment.<sup>10</sup>

Section 1.925(b)(3) of the Commission’s rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>11</sup>

Under both of these standards, grant of the requested waiver is warranted. Application of the Section 20.19(d)(2) handset deadline to Cellcom would be inequitable in light of the lack of availability of T-rated HAC compliant handsets, a factor outside of Cellcom’s control. The unavailability of such handsets leaves Cellcom with no reasonable alternative but to seek a waiver.

---

<sup>9</sup> GARMIN International, Inc., *Order on Reconsideration*, DA 01-851 at ¶ 5.

<sup>10</sup> See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd 1981 ¶¶ 76-77 (1994) (modifying a proposed compliance deadline to account for the unavailability of necessary equipment).

<sup>11</sup> 47 C.F.R. § 1.925(b)(3).

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's HAC benchmarks set forth in Section 20.19. The Commission developed the inductive coupling requirement deadline in order to spur manufacturers to offer handsets by that date that are T-rated. The Commission's rules have recently resulted in a number of T-rated handsets becoming available on the market. Once these handsets become available to smaller carriers like Cellcom, they will be available nationwide from both Tier I carriers and small carriers, thus meeting the underlying purpose of the rule to make such handsets available in as timely a manner as possible.

### **III. Conclusion**

Based on the foregoing, Cellcom requests a temporary and limited waiver of Section 20.19(d)(2) until December 1, 2006, as set forth herein. Cellcom's timetable for compliance is based on its experiences and contacts with manufacturers and distributors and publicly available information regarding handset availability.

Respectfully submitted,

Brown County MSA, LP, Wisconsin RSA #4,  
LP, Wisconsin RSA #10, LP, Wausau  
Cellular Telephone Company, LP, and  
Nsighttel Wireless, LLC d/b/a Cellcom

By: \_\_\_\_\_/s/\_\_\_\_\_

Michael R. Bennet  
Kenneth C. Johnson  
Bennet & Bennet, PLLC  
10 G Street, N.E.  
Seventh Floor  
Washington, DC 20002  
202-371-1500

Dated: September 18, 2006

Its Attorneys

## DECLARATION OF JIM LIENAU

I, Jim Lienau, do hereby declare under penalty of perjury, the following:

1. I am the Vice President of Wireless Technical Services of Brown County MSA, LP, Wisconsin RSA #4, LP, Wisconsin RSA #10, LP, Wausau Cellular Telephone Company, LP, and Nsighttel Wireless, LLC d/b/a Cellcom ("Cellcom").
2. I have read the foregoing "Petition for Temporary and Limited Waiver of Section 20.19(d)(2) of the Commission's Rules." I have personal knowledge of the facts set forth herein, and believe them to be true and correct.

Jim Lienau  
Jim Lienau

9/18/06  
Date